

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1-18 are currently being prosecuted. The Examiner is respectfully requested to reconsider her rejections in view of the amendments and remarks as set forth below.

Abstract

The Examiner objected to the Abstract as exceeding the 150 word limit. By way of the present Amendment, Applicants have completely re-written the abstract to be shorter and to avoid legal phrases. Accordingly, Applicants submit that this objection is overcome.

Specification

The Examiner objected to the specification as not including headings for the various sections. By way of the present Amendment, Applicants have added these headings to the specification.

Rejection Under 35 USC 112, Second Paragraph

Claims 12 and 16-18 stand rejected under 35 USC 112, second paragraph as being indefinite. This rejection is respectfully traversed.

In regard to claim 12, the Examiner objected to the limitation "more in particular". By way of the present amendment, Applicants have specifically defined the element as having a closed distal end. Accordingly, this part of the rejection is overcome.

The Examiner rejected claim 16 and pointed out that there was no antecedent basis for the "open proximal end". By way of the present Amendment, Applicants have canceled the word "proximal" so that antecedent basis is present in claim 1.

The Examiner rejected claim 17 and 18 as being indefinite and being omnibus type claims. By way of the present Amendment, Applicants have revised these claims so as to depend from claim 1. Accordingly, this rejection is believed to be overcome.

Rejection Under 35 USC 102

Claims 17 stands rejected under 35 USC 102 as being anticipated by Bradshaw et al. (US Patent 5,092,384). This rejection is respectfully traversed.

The Examiner states that Bradshaw et al. teaches a seed load apparatus provided with an implanting device.

By way of the present Amendment, Applicants have amended claim 17 to depend from claim 1. Applicants submit that the Bradshaw et al. reference does not teach claim 17 as presently amended. Accordingly, this rejection is believed to be overcome.

Claim 18 stands rejected under 35 USC 102 as being anticipated by Tucker et al. (US Patent 5,976,067). This rejection is respectfully traversed.

The Examiner states that Tucker et al. shows a row of radioactive seeds and spacers accommodating a tube-shaped element.

By way of the present Amendment, Applicants have amended claim 18 to depend from claim 1. Accordingly, Applicants submit that this rejection is also overcome.

Rejection Under 35 USC 0103

Claims 1-3, 5-8, 11, 12, 14 and 16 stand rejected under 35 USC 103 as being obvious over Schmidt (US Patent 5,928,130) in view of Tucker et al. (US Patent 5,976,067). This rejection is respectfully traversed.

The Examiner states that Schmidt shows a device for implanting a row of radioactive seeds and spacers in animal body including a hollow needle 12, a pushing element 26, a sleeve member 18, where the sleeve member has a stopper element 20, and where the sleeve member and seeds and spacers have outer dimensions smaller than the inner dimension of the hollow needle.

The Examiner relies on Tucker et al. to teach a row of seeds and spacers including a tube-shaped element 12 with ends 21 and 23 that are open for a portion of the length and closed for the remaining portion of the length where the open portions are collapsible and where the tube-shaped element has a circular cross-section. The Examiner feels it would have been obvious to

one of ordinary skill in the art to implant a row of seeds similar to those of Tucker with a device similar to that of Schmidt. This rejection is respectfully traversed.

Claim 1 describes the device for implanting seeds and spacers as including a hollow needle, a tube-shaped sleeve member, a pushing element and a tube-shaped element. While the Examiner has pointed out that Schmidt shows a hollow needle, a sleeve member and a pushing element, this reference does not in any manner teach the tube-shaped element as presently defined.

In regard to Tucker et al., the Examiner points that the row of seeds is placed in a tube-shaped element having the two ends. However, the tube shaped element defined in claim 1 includes at least one open end. Both ends of the element 12 of Tucker et al. are sealed as indicated at column 3, lines 57 and 58.

Furthermore, claim 1 states that the tube-shaped element is inserted by the sleeve member through the hollow needle. Schmidt does not describe a tube-shaped element at all. Tucker et al. does not describe that the tube-shaped element 12 is inserted. Thus, neither of the references teach the limitation that the tube-shaped element is inserted by the tube-shaped sleeve member through the hollow needle.

Furthermore, the tube-shaped element accommodates a row of seeds and spacers. Applicants submit Tucker et al. does not show a row of seeds and spacers at all. Instead, Applicants submit that Tucker et al. instead describes only a seed rather than a row of seeds and spacers in a tube-shaped element. Thus, each of the claims in Tucker et al. refers to the "implantable seed". This terminology is also used throughout the specification of Tucker et al. Thus, although element 12 of Tucker et al. includes separate parts of in a row, it is the device as a whole that is considered to be a seed. It is further noted that Tucker et al. does not show spacers as such, but rather segments of ferro magnetic alloy which heat up in an oscillating magnetic field to add heat treatment to the radiation treatment in the seed.

Furthermore, this seed is an activatable seed implant and must be removed after the radiation treatment because of the material utilized. Thus, the seed is maintained inside the patients body for a limited treatment time and because the ferro magnetic alloy must be activated by means of an oscillating magnetic field. Thus, the patient must stay in the hospital with these

seeds implanted since they cannot be effective for treatment unless activated by the oscillating magnetic field.

This differs from the present invention where the row of seeds and spacers are permanently implanted in the patient. Thus, the patient is expected to leave the hospital with the radioactive seeds in place. In the prior art, the possible movement of the seed in the body may not be consequential since it will shortly be removed. However, in the present invention, since they are permanently implanted there is a great disadvantage if these seeds move. Thus, the present invention uses the tube-shaped element to receive the seeds and spacers in order to help prevent the individual seeds from moving within the patient's body.

For these reasons, Applicants submit claim 1, as amended, is allowable.

Claims 2-18 depend from claim 1 and as such are also considered to be allowable. In addition, each of these claims recites other features that make them additionally allowable.

Claim 4 stands rejected under 35 USC 103 as being obvious over Schmidt and Tucker et al. in further view of Bradshaw et al. Claims 10 and 15 stand rejected under 35 USC 103 as being obvious over Schmidt and Tucker et al. in view of Lowery (US Publication 2003/0109769). These rejections are respectfully traversed.

The Examiner cites the Bradshaw et al. reference to show a drive wire of the seed loading device to be the pushing element. The Examiner relies on Lowery et al. to show a bio-absorbable tube-shaped element. Applicant submits that even if these additional references do teach these features, these claims remain allowable based on their dependency from allowable claim 1.

Allowable Subject Matter

It is gratefully acknowledged that the Examiner considers that subject matter of claims 9 and 13 as being allowable if re-written in independent form. Applicants have not yet re-written these claims in independent form since it is believed that claim 1 from which they depend is considered to be allowable.

Conclusion

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination. In view of this, reconsideration of the rejections and allowance of all the claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert F. Gnuse Reg. No. 27,295 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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